

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
DAVID AND JOAN MARSH	:	DETERMINATION
	:	DTA NO. 818562
for Redetermination of a Deficiency or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law for the Year 1994.	:	

Petitioners, David and Joan Marsh, 69 Bay Avenue, Apt. 5, Huntington, New York 11743, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1994.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 400 Oak Street, Garden City, New York on August 22, 2002 at 1:15 P.M. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Kathleen Pfaffenbach).

Since neither party herein elected to reserve time to file a post-hearing brief, the three-month period for the issuance of this determination began as of the date the hearing was held.

ISSUE

Whether the Division of Taxation properly denied petitioners' claim for refund for the year 1994 on the ground that said claim was filed after the statute of limitations for refund had expired.

FINDINGS OF FACT

1. On August 27, 1999, the Division of Taxation (“Division”) corresponded with petitioners herein, David and Joan Marsh, indicating that available information revealed they had income for the 1994 tax year and thus may have been required to file a New York State personal income tax return for said year. The letter further stated that the Division’s records indicated that petitioners “may not have filed a return.” If a return for 1994 had been filed, petitioners were asked to send a signed copy of the return along with information regarding any refund received or a copy of the canceled check in payment of any tax due. If petitioners had not yet filed a return for 1994, they were instructed to submit one within 30 days of the date of the letter. Finally, if petitioners believed that they were not required to file a return for 1994, they were asked to explain the basis for not filing.

2. On September 14, 1999, petitioners mailed a 1994 New York State Resident Income Tax Return to the Division. The return, prepared by the accounting firm of Raskin & Raskin, bore a typewritten preparation date of June 15, 1995 and was also stamped “Taxpayers Copy Raskin & Raskin.” Page 2 of the return contained petitioners’ original signatures and was hand dated September 14, 1999. The return for 1994 reported total New York State personal income tax due of \$7,390.00, which amount was paid in full by credit for New York State tax withheld from wages of \$9,673.00. Petitioners’ return requested that the \$2,283.00 overpayment (\$9,673.00 - \$7,390.00) be refunded to them.

3. On September 22, 2000, the Division issued a Notice of Disallowance to petitioners advising them that the \$2,283.00 refund claimed on their 1994 income tax return had been denied in full. The basis for the denial, as stated in the Notice of Disallowance, was that “the deadline for filing for a refund or credit expired three years from the date the return was due.”

4. For the 1994 tax year petitioners, as calendar year taxpayers, were required to file a personal income tax return on or before April 17, 1995, and thus any claim for refund with respect to tax withheld from wages was required to be filed by April 17, 1998. The Division argues that petitioners' 1994 return submitted on September 14, 1999 was filed well after the statute of limitations for refund had expired. On the other hand, petitioners maintain that they first filed their 1994 personal income tax return on or about June 15, 1995, a date clearly within the applicable three-year statute of limitations for refund, and that the return submitted on September 14, 1999 was merely a copy of the return which they had previously filed. Thus, resolution of this controversy hinges upon the determination as to the date that petitioners' 1994 return was actually filed.

5. Petitioners' New York State personal income tax return for 1994 was prepared by the certified public accounting firm of Raskin & Raskin on or about June 15, 1995. Pursuant to a letter dated February 9, 2001, Raskin & Raskin stated that its "records indicate that the (1994) return was sent to the taxpayer to file in June 1995. . . ." Petitioners' maintain that they reviewed and signed the return shortly after they received it from Raskin & Raskin and that the return was personally mailed by petitioner David Marsh from a United States Post Office located next to a business he operated. The return would have been mailed via ordinary first-class mail.

6. In light of petitioners' contention that their New York State personal income tax return for 1994 was mailed in June 1995 the Division has made several searches of its records in an effort to locate said return. The Division was unable to find any record of a 1994 New York State personal income tax return filed by petitioners prior to the one received on September 14, 1999.

7. Petitioners have timely filed their New York State personal income tax returns for the years both prior and subsequent to the 1994 tax year. Although petitioners claim that they filed their 1994 return in June 1995, they admittedly did not follow-up on the status of the \$2,283.00 refund shown on said return since they assumed that the Division had applied the overpayment to a substantial uncontested and unpaid New York State income tax liability for the years 1992 and 1993. The Division, as judgement creditor, had filed a warrant against petitioners in Nassau County on March 1, 1995 for the unpaid income taxes due for 1992 and 1993.

SUMMARY OF PETITIONERS' POSITION

8. Petitioners assert that logic and reason support that they filed their 1994 New York State personal income tax return in June 1995. Petitioners contend that since their 1994 return was prepared and mailed to them by their accountant on or about June 15, 1995, it is reasonable to conclude that the return was filed in June 1995, especially in light of their timely filing record for years both prior and subsequent to 1994. Furthermore, petitioners point out that there is no logical reason for them not to file the return since it claimed they were due a substantial refund. Petitioners argue that it was reasonable for them to assume that the Division had applied the refund shown on the 1994 return to their 1992 and 1993 unpaid income tax liabilities and that explains why they never followed up on the status of the 1994 refund. It is petitioners' position that these facts, coupled with their credible testimony regarding the actual mailing of the return, is sufficient to establish that the 1994 return was first filed in June 1995, and not on September 14, 1999 as alleged by the Division.

CONCLUSIONS OF LAW

A. As relevant to this proceeding, Tax Law § 687, entitled "Limitations on credit or refund" provides as follows:

(a) General. --- Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later. . . . If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim. . . .

For the year at issue petitioners' only payment of tax was via tax withheld from wages.

Pursuant to Tax Law § 687(i) income taxes withheld from wages are deemed to have been paid by a taxpayer on April 15th of the following year. Accordingly, in order to be entitled to a refund of any of the tax withheld from their wages for the 1994 tax year, petitioners would be required, pursuant to Tax Law § 687(a), to file a claim for such refund of tax withheld by April 17, 1998.

B. Tax Law § 691(a) provides, in pertinent part, that:

If any return . . . required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date . . . is, after such period or such date, delivered by United States mail . . . the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. . . . If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed.

When the Division fails to receive a document, the general rule is that proof of ordinary mailing is insufficient as a matter of law to prove timely filing (*Matter of Reeves*, Tax Appeals Tribunal, August 22, 1991; *Matter of Savadjian*, Tax Appeals Tribunal, December 28, 1990; *Matter of Filler*, Tax Appeals Tribunal, August 24, 1989; *Matter of WSD United Transp.*, Tax Appeals Tribunal, July 27, 1989).

C. In the instant matter, the Division has established that it has no record of receiving the New York State personal income tax return for the year 1994 which was purportedly mailed by petitioners in June 1995. The Division's records reflect that the first time it received petitioners' return for 1994 was on September 14, 1999. Accordingly, the burden is on petitioners to prove

(Tax Law § 689[e]), by one means or another, that they filed the return for 1994 with the Division before the statute of limitations for refund had expired. Petitioners' testimony concerning the mailing of the 1994 return, although forthright and sincere, is not sufficient to permit a conclusion that they have met their burden of proving that the return for the year at issue was first filed in June 1995 (*see, Matter of Miller v. United States*, 784 F2d 728, 86-1 US Tax Cas ¶ 9261; *Matter of Sipam*, Tax Appeals Tribunal, March 10, 1988 [for a general discussion on the filing of various documents with the Division and the Division of Tax Appeals]). Petitioners could have avoided any risk of mishandling of the returns by the Postal Service or by the Division had they used certified or registered mail (Tax Law § 691[a]; 20 NYCRR former 146.4[c]), since certification or registration serves as prima facie evidence that a document or payment was delivered. However, petitioners chose to mail their 1994 return using ordinary first class mail and therefore they bear the risk of nondelivery or mishandling.

D. The petition of David and Joan Marsh is denied and the Division's Notice of Disallowance dated September 22, 2000 is hereby sustained.

DATED: Troy, New York
October 24, 2002

/s/ James Hoefer
PRESIDING OFFICER